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TRANSCRIPT OF RECORD

85 S.Ct.
U.S.

Supreme Court of the United States

OCTOBER TERM, 1936 7

No. 779

NOLEN R. BREEDLOVE, APPELLANT,

vs.

T. EARL SUTTLES, AS TAX COLLECTOR

APPEAL FROM THE SUPREME COURT OF THE STATE OF GEORGIA

FILED MARCH 4, 1937.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 777

NOLEN R. BREEDLOVE, APPELLANT,

vs.

T. EARL SUTTLES, AS TAX COLLECTOR

APPEAL FROM THE SUPREME COURT OF THE STATE OF GEORGIA

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., APRIL 3, 1937.

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[fol. 1]

IN SUPERIOR COURT OF FULTON COUNTY

PETITION—Filed March 20, 1936

To the Superior Court of Said State and County:

The petition of Nolen R. Breedlove respectfully shows:

1. That T. Earl Suttles is the tax collector of Fulton County, Georgia, being a resident of said County, and these mandamus proceedings are instituted against him as defendant in his capacity as tax collector of said State and County.

2. That petitioner is a white male citizen of the United States of America, being twenty-eight years of age, and having resided in Fulton County, Georgia, for more than seven years next preceding the filing of this petition.

3. That on the 16th day of March, 1936, petitioner went to the office of defendant tax collector for the purpose of registering to vote in the primaries and general election to be held during this year for the election of a President of the United States, Members of the Upper and Lower House of the Congress of the United States, Governor of Georgia and members of the General Assembly of this State.

4. That petitioner informed John L. Fuller, Deputy Clerk in charge of the registration book in defendant tax collector's office, that he desired to have the voters' oath administered to him without any reference being made to the payment of poll tax, for that he had not paid any poll tax since he became twenty-one years of age; that he desired to vote in said elections to be held this year; whereupon the said clerk refused to comply with petitioner's demand, [fol. 2] stating that the only oath which he was authorized to administer was the regular printed form required of all persons desiring to register, a copy of said oath being attached hereto as Exhibit A, and that he could and would not administer the said customary oath to him unless petitioner had paid all past due poll taxes assessed against him, which said clerk stated was in the approximate amount of $13.50.

5. Whereupon, petitioner presented to T. Earl Suttles as tax collector of said county, a formal demand in writing that he be administered the voters' oath with no reference therein to the payment of poll tax and that he be allowed to register, a copy of said demand being hereto attached as Exhibit B.

6. That defendant tax collector refused to comply with petitioner's formal demand, and then and there confirmed said verbal refusal by denying the request and demand of petitioner in writing, a copy of defendant tax collector's reply being attached hereto as Exhibit C.

7. That defendant tax collector refused to administer the voters' oath to petitioner and refused to allow him to register upon the ground that petitioner had not paid poll taxes for the past seven years in the approximate amount of $13.50 as required under Article II, Section 1, paragraph 3 of the constitution of Georgia, as amended, said paragraph being as follows:

"Par. III. Who entitled to register and vote. To entitle a person to register and vote at any election by the people, he shall have resided in the State one year next preceding the election, and shall have paid all poll taxes that he may have had an opportunity of paying agreeably to law. Such payment must have been made at least six months prior to the election at which he offers to vote, except when such elections are held within six months from the expiration of [fol. 3] the time fixed by law for the payment of such taxes. (Acts 1908, pp. 27, 28, ratified Oct. 7, 1908; Acts 1931, pp. 102, ratified Nov. 8, 1932)."

8. That defendant tax collector refused to administer the voters' oath to petitioner and refused to allow him to register upon the further ground that petitioner had not paid poll tax for the past seven years in the amount aforesaid as required under sections 34-103, 34-113, 34-114 and 92-108 of the Code of Georgia, said sections of the Code of this State being as follows:

"34-103. Form of Oath Required to Qualify Elector.

The oath to qualify an elector shall be as follows:

"I do swear, or affirm, that I am a citizen of the United States; that I am 21 years of age, or will be on the — day of —— of this calendar year; that I have resided in this State

for one year, and in this county for six months, immediately preceding the date of this oath, or will have so resided on the day of —— of this calendar year; *that I have paid all poll taxes which I have had an opportunity of paying agreeably to law;* that I possess the qualifications of an elector required by the constitution; and that I am not disfranchised from voting by reason of any offense committed against the laws of the State. I further swear, or affirm, that I reside in the — district, G. M., or in the — ward of the city — of —, at number — on — street; my age is —, my occupation —." (Acts 1894, pp. 116; Acts 1908, pp. 58; Acts 1913, pp. 115; Const. * * *, Art. II, Sec. I, par. II) (Sec. 2-603).

"34-113. Registration Dependent upon Payment of Taxes Six Months before Election. No one shall be allowed to register for a general election unless he shall have paid all poll taxes due by him at least six months before the date of [fol. 4] the election." (Acts 1908, pp. 58, Const. * * *, Art. II, Sec. 1, Par. II (Sec. 2-603).

"34-114. Tax Collector must be satisfied applicant entitled to register. No tax collector shall allow any person to sign his name in the voters' book unless he is satisfied, at the time, that the poll taxes due by said voter are paid and that he is otherwise qualified." (Acts 1894, pp. 115, 117. Const. * * *, Art. II, Sec. i, Par. II (Sec. 3-603).

"92-108. Poll Tax; Exemptions. There shall be levied and collected each year upon every inhabitant of the State between the ages of 21 and 60 years, on the day fixed for the return of property for taxation, a poll tax of $1, which shall be used for educational purposes in instructing children in the elementary branches of an English education only: Provided, that this tax shall not be demanded of blind persons, or female inhabitants of the State who do not register for voting." (Acts 1927, pp. 57).

9. That so much of said Article II, Section 1, Paragraph 3 of the Constitution of Georgia, as amended, and Sections 34-103, 34-113, 34-114 and 92-108 of the Code of Georgia enacted in pursuance thereof, as requires the payment of poll taxes as a prerequisite to the right of citizens of the United States residing in this State to register and vote for the candidates seeking the offices enumerated in Paragraph 3 above is in conflict with, contrary to and in deroga-